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In re Application of :
WONG :
Patent number: 7071828 : DECISION ON PETITION
U.S. Application No.: 10/088,757 :
PCT No.: PCT/AU01/00180 : UNDER 37 CFR 1.78(a)(3)
Int. Filing Date: 22 February 2001 :
Priority Date: 22 February 2000 : AND 37 CFR 1.78(a)(6)
Atty Docket No.: Q68693 :
For: WEARABLE BAND WITH MOTION :
DETECTION AND FLASHING LIGHTS :

This is a decision on the petition filed 24 October 2005, under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior filed provisional application. The petition has also been treated as a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 365(c) for the benefit of a prior-filed international application designating the United States of America (Application No. PCT/AU01/00180, filed 22 February 2001).

The petitions under 37 CFR 1.78(a)(3) and (6) are **DISMISSED** as follows.

The instant petition seeks acceptance of a late claim for priority to a prior-filed PCT national stage application by way of an amendment to the specification, which reads: "This application is a continuation of international application number PCT/AU01/00180, filed February 22, 2001, which claims the priority of Australian application number PQ 5778, filed February 22, 2000."

As set forth in MPEP 1893.03(c), page 1800-199, a national stage application filed under 35 U.S.C. § 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. *See also* MPEP 1893.03(b). In this regard, since the international application is not an earlier application (it has the same filing date as the national stage), a priority claim in the national stage of the international application is inappropriate. Accordingly, the petition under 37 CFR 1.78(a)(3) is **DISMISSED**.

Petitioner also requests acceptance of a delayed claim for priority under 35 U.S.C. § 119(e) but fails to identify a reference to a U.S. provisional application as required under 37 CFR 1.78(a)(5). Accordingly, the petition under 37 CFR 1.78(a)(6) is **DISMISSED**.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the Derek Putonen at (571) 272-3294.



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